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C O N F I D E N T I A L SECTION 01 OF 02 LAGOS 001288

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TAGS: [PREL](#) [PGOV](#) [NI](#)
SUBJECT: IMPEACHMENT FEVER HITS EKITI

REF: A. LAGOS 1220

Classified By: Consul General Brian L. Browne for reason 1.4 b

11. (U) Summary: Embattled Governor Ayo Fayose has gone underground and may have left Ekiti State following his removal after a lightning-quick impeachment proceeding by the Ekiti State Assembly on October 16. A panel convened by the Chief Justice of Ekiti State had earlier acquitted the Governor. For this deed, the anti-Fayose House suspended the Chief Justice, replacing him with another who reconstituted a panel to find Fayose guilty of the offenses alleged. Ironically Fayose, whose conduct would cause a mafia don to blush, may get a reprieve should the rule of law be precisely followed. Most legal experts believe the removal of the Chief Justice was unconstitutional, and that any action taken pursuant to the panel chaired by the acting Chief Justice is null and void. This would include Fayose's removal. Nonetheless, many lay persons believe that, with regard to this errant and often violent governor, the ends adequately excuse the otherwise suspect means used to effectuate his exit. End Summary.

The Road to Impeachment . . .

12. (C) First-term Ekiti State Governor Ayo Fayose has alienated the Ekiti elite and former supporters by his strong-arm tactics and poor performance. He successfully removed his first Deputy Governor and attempted to dethrone the traditional ruler of Ekiti. More disturbingly, observers suspect the Governor is connected to the murder of rival gubernatorial candidate Ayodeji Daramola (Ref A) and attacks against many other political opponents. Recently, however, the Economic and Financial Crimes Commission (EFCC), prompted by allegations of malfeasance involving a Naira 1.2 billion (approximately USD 10 million) government-funded poultry project, investigated Fayose and prepared indictments against him. Because the constitution provides a sitting governor with immunity from prosecution, the EFCC presented the indictments to the Ekiti House of Assembly for use as the basis for impeachment proceedings.

13. (U) In late September, members of the Ekiti State House traveled to Lagos where they met EFCC officials in a closed-door meeting. At the meeting, the EFCC presented officials with the evidence on which the indictments are based. Upon its return to Ado-Ekiti, the Ekiti State capital, the State House of Assembly, led by Speaker Friday Aderemi, initiated impeachment proceedings against the Governor on six counts of corruption and against his Deputy Governor, Biodun Olujimi, on two counts. President Obasanjo refused to meet with a group of Southwest Governors who attempted to intercede on behalf of Fayose.

...Takes an Unconstitutional Turn

14. (U) According to Section 188 of the Nigerian Constitution, impeachment of a governor requires the Chief Justice to select a seven-person panel "of unquestionable integrity" to investigate the charges that have been tendered in the State Assembly against the governor. Chief Justice Kayode Bamsile, a Fayose appointee, established such a panel on October 10.

15. (U) The State Assembly objected to the panel's composition, remonstrating the panel was stacked with close friends and supporters of Fayose. Both the EFCC and State Assembly refused to testify before the panel, following which the panel issued a verdict of not guilty on all charges.

16. (U) On October 13, the State House suspended Chief Justice Bamsile and replaced him with Jide Aladejana. The new Chief Justice appointed a different seven-person panel which quickly recommended impeachment. The State House, acting on the recommendation, voted to remove Fayose and Olujimi, leaving the way open for Speaker Aderemi to assume the Governorship on October 16. The same day, the news media reported that Fayose had fled Ekiti; his whereabouts remain unknown.

Lawyers: Illegal Removal of Judge Taints Impeachment

17. (U) On October 14, Nigerian Supreme Court Chief Justice Alfa Belgore issued a public statement that the suspension of

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Ekiti Chief Justice Bamsile was unconstitutional. The statement also asserted subsequent actions by the Ekiti House-appointed Chief Justice would be null and void. The Ministry of Justice has called the ouster of the Justice an ultra vires wrong committed by the State Assembly. The Nigerian Bar Association National President and prominent human rights attorney Olisa Agbakoba issued a statement condemning the action. Three other respected constitutional experts told Poloff that they are in complete agreement with the opinion of the Chief Justice. Bamidele Aturu, a constitutional expert from Lagos, said that Chief Justice Belgore's interpretation of the constitution is completely correct. The actions of the Ekiti State House were extralegal, Aturu concluded. (Comment: Because the Fayose matter is not before the Supreme Court, Chief Justice Belgore's statement has no binding legal force. In fact, Belgore has been criticized for making a gratuitous public utterance on an issue that might ultimately go to the Supreme Court. End comment.)

18. (C) Attorney Sikiru Idowu Salami, an Ibadan-based lawyer, told Poloff that the State House has run roughshod over the constitutional process. The constitution gives the State House, acting alone, no standing to remove the Chief Justice. According to Section 292(1)(a)(ii) of the Constitution, removal of the Chief Justice can only be accomplished by the State House with the signature of the Governor, Salami explained. The appointment of the acting Chief Justice was also illegal, Salami noted, because the State House must obtain the Governor's approval to appoint an acting Chief Justice as well.

19. (C) Nurudeen Ogbara, Chair of the Lagos Section of the Nigerian Bar Association, remarked that the house's actions subvert due process. Every action taken following the removal of the Chief Justice should be considered null and void. While not defending Fayose, Ogbara noted that the Ekiti State House had ventured well outside established boundaries of law and propriety in trying to nix Fayose.

Beyond Impeachment, A Special Election

¶10. (U) Salami noted that with the impeachment of both the Governor and the Deputy Governor, the Speaker of the State House of Assembly will serve as Acting Governor. After three months, a special election will be held to select a Governor to serve out the remainder of Fayose's term. This special election will precede the scheduled April 2007 general election, Salami said.

Comment

¶11. (C) In their haste to rid the state of Governor Fayose, the Ekiti State House of Assembly seems to have disregarded the Nigerian Constitution. Lawyers and those who support the rule of law are complaining about the actions of the Assembly. It is a matter of bitter irony, but Fayose's tenure could be saved by those to whom he paid scant attention during his tenure--attorneys who champion the rule of law. What this case also brings into stark focus is the dichotomy between those who hold the rule of law sacrosanct and those who merely see it as a convenience to be discarded should it hamper their arrival at a desired outcome. End comment.

BROWNE